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Supreme Court, U.S.
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No. 10-1179

In the Supreme Court of the United States

JOHN HAMILTON, et al.,

Petitioners,

v.

CITY OF ROMULUS, MICHIGAN, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

DID THE TRIAL COURT PROPERLY APPLY RULE 56 STANDARDS AND CORRECTLY CONCLUDE THAT PLAINTIFFS' CONSPIRACY AND 42 USC 1983 CLAIMS WERE SUPPORTED BY NO EVIDENCE?

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STATEMENT OF THE CASE

Plaintiffs make no claim for municipal liability against the City of Inkster. Record 268, Response to SJ Motion, p 6; Record on Appeal to the 6th Circuit (hereafter "ROA"), Appellant Brief, 12/11/09, p 25, n 1. As to the Inkster Defendants, Plaintiffs did not appeal from the United States District Court's dismissal of their claims under 42 U.S.C. 1985(2) and for conversion, taking and larceny. ROA Appellant Brief, 12/11/09. With regard to the Inkster Defendants, Plaintiff's appeal is limited to claimed violations of 42 U.S.C. 1983 and federal and state law conspiracy claims. *Id.*, pp 60-61.

This case involves four adult entertainment/strip clubs; namely, Henry the VIII, South, ("Henry's South") owned by Jo-Bet, Inc.; Legg's Lounge, owned by Garter Belt, Inc.; Henry the VIII Lounge ("Henry's"), owned by Hamilton's Henry the VIII Lounge, Inc.; and Bogart's Joint ("Bogart's), owned by Hamilton's Bogart, Inc.

As the District Court explained, "[g]enerally, Plaintiffs' claims against the Inkster Defendants stem from allegations that [they] conspired among themselves, and with the Michigan Liquor Control Commission ("MLCC") to put Hamilton's two Inkster strip clubs – Henry's and Bogart's – out of business." Record 335, Memo/Order, p 4.

In their response to Defendants' Motion for Summary Judgment, Plaintiffs summarized their

evidence of a conspiracy involving the Inkster Defendants as follows:

> (1) That the Inkster Defendants, among themselves, created a plan to harass or shut down Henry's. The overt acts include the false bomb threat by Abdullah, which "justified" a search under false pretenses by Brown, who stole a tape, which was obtained by Martin, who then made a complaint to the MLCC, which was supported by perjured testimony
>
> (2) That the Inkster Defendants conspired with the MLCC to shut down Hamilton's businesses. The overt acts include the above and the MLCC's eagerness to use evidence obtained unconstitutionally and supported by perjured testimony.

Record 268, Response, pp 4-5.

As was patently clear to the District Court, Plaintiffs presented no evidence supporting their federal and state law conspiracy claims or their 42 U.S.C. 1983 claims against the Inkster Defendants. Proof of Plaintiffs' lack of evidence is found in Record 296, Joint Submission of Statement of Facts Not in Material Dispute, the evidence the Inkster Defendants cited therein, and in the attachments filed with the Inkster Defendants' summary judgment pleadings. Record 201; Record 252, SJ Pleadings and Exhibits, Record 201-1 to 201-9; Record 219, Supplemental Brief, and attachment, Record 219-3, Hamilton 4/17/07 dep.

Specifically, Hamilton testified that he had no proof that anyone from Inkster ever tried to close Bogart's or that the Inkster Defendants were involved in a conspiracy with the other Defendants. Record 296 Joint Submission, Nos. 13, 14, 21, 22, 30, 32-37. In addition, Hamilton testified that he has no personal knowledge that the Inkster Defendants planned or executed a bomb scare at Henry's. Record 296, Joint Submission, Nos. 23, 24. The undisputed evidence is that the person who called in the bomb threat at Henry's has never been identified. Record 296, Joint Submission, No. 25; Record 201, Record 252, SJ Pleadings, Record 201-6, Martin dep, pp 18-19.

Previously, Michigan courts conclusively reviewed the issue of whether there was collusion between the Inkster Police Department, including Officers Brown and Martin, and the MLCC, and concluded that there was no evidence of any understanding between the Inkster Police and the MLCC with respect to investigating violations in Henry's after Brown gave the MLCC the videotape that Martin removed from Henry's. Record 201, Record 252, SJ Pleadings, R 201-8, *Henry the VIII Lounge, Inc. v. Dep't of Consumer & Industry Services and Liquor Control Comm'n,* unpublished per curiam decision of the Michigan Court of Appeals, rel'd May 18, 2006 (Docket No. 255893), lv den 477 Mich 1055 (2007), pp 4-5.

Furthermore, Jeremy Hamilton, John Hamilton, Jr. and Michael Hamilton testified that they have no evidence supporting the conspiracy and first amendment claims. Record 296, Joint Submission of Facts Not in Dispute, Nos. 39-48, 56-61. Hamilton also admitted that he has no evidence that the Inkster Defendants tried to interfere with his family or rights

of association with his children. Record 296, Joint Submission, No. 51.

Furthermore, Hamilton testified that the revenues at Bogart's and Henry's in Inkster have not gone down since the start of the lawsuit, that the business at Bogart's has been pretty consistent throughout the years, that he has not lost any money at Bogart's, and that nobody in the City of Inkster has tried to close Bogart's. Record 296, Joint Submission, Nos. 64, 66. Hamilton also testified that he has not lost any money from his operations at Henry's or Bogart's that is attributable to the Inkster Defendants, and that both of those establishments still had their liquor licenses and presented topless dancing when he was deposed. Record 296, Joint Submission, No. 67.

In the District Court, Plaintiffs did not rely on the report of Henry Levine to support their claims against the Inkster Defendants. Record 268, Response. In the United States Court of Appeals for the Sixth Circuit, Plaintiffs cited the report as to the Inkster Defendants in a conclusory manner without explaining how it supported their claims of conspiracy or § 1983 violations. ROA, Appellant Brief, 12/11/09, pp 25, 26.

The District Court granted the Inkster Defendants' summary judgment motion, which was brought under Rules 12(b)(6) and 56(c) of the Federal Rules of Civil Procedure, and entered judgment in favor of all of the Inkster Defendants, including the City of Inkster. Record 335, Memo/Order, Record 336, Judgment, Record 337, Order Amending Record 335.

SUMMARY OF ARGUMENT

This case demonstrates a proper application of summary judgment principles. The District Court correctly concluded that Plaintiffs had failed to produce any evidence giving rise to a genuine issue of material fact. Plaintiffs failed to produce any evidence to sustain their claim of violation of 42 U.S.C. 1983, whether that claim is premised on alleged deprivation of the right of association, or on alleged retaliation for exercise of First Amendment expression. The right of association, according to Plaintiffs' own theory, was violated by a non-party, the MLCC. The Michigan courts have conclusively determined that there was no collusion between the MLCC and the Inkster Defendants. Moreover, the individual Plaintiffs have admitted that the Inkster Defendants did not interfere with their family relationships. The alleged retaliation is necessarily based on the same factual claims and fails for the same reasons.

Plaintiffs have equally failed to produce any evidence to show a conspiracy by or among the Inkster Defendants. Plaintiffs' claim that the lower courts improperly narrowed their claim is without merit where Plaintiffs themselves characterized the conspiracy as arising from or related to the alleged bomb threat at Henry's. Plaintiffs' belated attempt to create a factual issue by relying upon an expert report as to the Inkster Defendants fails for two reasons: because the report was not relied upon in this manner in the trial court; and because the report merely provides conclusory statements. Plaintiffs have failed to show an agreement to injure another by unlawful action, an overt act in furtherance of such agreement, or any damages, monetary or otherwise, flowing from

such agreement. In fact, the Plaintiffs admitted that neither Inkster business has lost money from their operations that is attributable to the Inkster Defendants. Plaintiffs' claims were dismissed not because the District Court's analysis was too narrow or erroneous, but because Plaintiffs did not and could not present evidence to support their claims.

ARGUMENT

I. THIS CASE INVOLVES A GARDEN VARIETY APPLICATION OF SUMMARY JUDGMENT PRINCIPLES, AND SUMMARY JUDGMENT WAS PROPERLY GRANTED DUE TO THE ABSENCE OF EVIDENCE TO SUPPORT PLAINTIFFS' CLAIMS.

Plaintiffs assert before this Court that "[t]he Courts below ignored a vast body of evidence from which a reasonable jury could have found 42 U.S.C. § 1983 liability and a conspiracy to violate Plaintiffs' constitutional rights." (Petition for Certiorari, p 5). However, as in the lower courts, Plaintiffs fail to specify any facts that could support these claims.

This Court advised in *Celotex v. Catrett*, 477 U.S. 317, 327; 106 S. Ct. 2548, 2555; 91 L. Ed.2d 265 (1986), that "[s]ummary judgment is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Id.*, quoting Fed. R. Civ. P. 1. Summary judgment is required "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.

P. 56(a). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586; 106 S. Ct. 1348, 1356; 89 L. Ed.2d 538 (1986) (footnote omitted). Rather, "the nonmoving party must come forward with 'specific facts showing that there is a *genuine issue for trial.*'" *Id.*, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) and adding emphasis). Evidence that is merely colorable, or that is not "significantly probative" will not withstand summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-250; 106 S. Ct. 2505, 2511; 91 L. Ed.2d 202 (1986). "[T]his standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Id.*, 477 U.S. at 247-248. This case involves a straightforward application of summary judgment principles. Defendants resoundingly demonstrated that there was no factual support for Plaintiffs' claims of conspiracy and § 1983 violations. Plaintiffs failed to come forward with specific facts demonstrating a genuine issue of material fact as to either claim.

A. The Sixth Circuit Court of Appeals properly affirmed the dismissal of Plaintiffs' § 1983 claim against the Inkster Defendants.

In seeking review by the United States Supreme Court, Plaintiffs herein refer generally to § 1983 violations without specifying the underlying violation of federal law or constitution that is supposed to

underlie their claim (Petition for Certiorari). In like manner, Plaintiffs complained to the Sixth Circuit Court of Appeals that the trial court had failed to consider all avenues of § 1983 liability, but failed to identify the rights, privileges, or immunities allegedly violated, except for cursory mention of the "right of association" and "retaliation taken against the appellants for engaging in 1st amendment expression." ROA, Appellant Brief, 12/11/09, pp 34, 34-36. In the trial court, in their response to the Inkster Defendants' summary judgment motion, Plaintiffs alleged a Fourth Amendment violation as the basis for their § 1983 claim. Record 268, Response, p 8. However, they waived that claim on appeal by failing to raise it in their appellate brief. ROA, Appellant Brief, 12/11/09. *Ahlers v. Schebil,* 188 F.3d 365, 374 (6th Cir. 1999); *White Oak Prop. Dev., LLC, v. Washington Twp., Ohio,* 606 F.3d 842, 854 (6th Cir. 2010) (claims not addressed in appellate briefs are waived).

Plaintiffs did make mention of the "right of association" in their appellate brief as a basis for § 1983 liability, albeit summarily and without citation of supporting authority. ROA, Appellant Brief, 12/11/09, p 34. However, the alleged deprivation of Plaintiffs' right of association was undisputedly attributed to a non-party, the Michigan Liquor Control Commission. In their response to the Inkster Defendants' Motion for Summary Judgment, Plaintiffs asserted:

> The freedom of association claim comes from the MLCC's acts to only grant liquor licenses to John Hamilton's sons if they agreed to a stipulation that neither John Hamilton or their mother could be present or assist in the

> management of the son's business. This license stipulation arose in 1999. *In 1996, Inkster Defendant Martin made perjured claims against Legg's in Van Buren which undoubtedly tainted the MLCC's view of Hamilton's businesses. In 2000, the Inkster Defendants staged their bomb threat and Martin made claims to the MLCC against Hamilton's business in Inkster. It is clear that the actions of the Inkster Defendants in their Harassment of Hamilton led to the actions by the MLCC against Hamilton's sons, which interfered with their right of association.* . . .

Record 268, Response, p 5 (emphasis added).

Plaintiffs did not present, nor cite, any evidence supporting their speculation that Martin's alleged claim against Legg's in Van Buren in 1996 "undoubtedly tainted the MLCC's view of Hamilton's businesses" in Inkster. *Id.* They also did not present, nor cite, any evidence supporting their speculative allegation that the Inkster Defendants staged a bomb threat, or that the bomb threat "led to the actions by the MLCC against Hamilton's sons, which interfered with their right of association. . . ." *Id.* In fact, it is undisputed that the perpetrator of the bomb threat has never been identified. Record 296, Joint Submission, No. 25; Record 201, Record 252, SJ Pleadings, Record 201-6, Martin dep, pp 18-19.

The District Court properly dismissed "the First Amendment claim because the individual plaintiffs claim that their right to association was violated – not by any of the defendants who remain party to this action – but rather by the MLCC, a former defendant

with which plaintiffs have settled." Record 335, Memo/Order, p 9. The Court further noted

> that the individual plaintiffs baldly assert in the FAC [First Amended Complaint] that their right to associate was violated by the Inkster Defendants. However, in their brief, they state that their "freedom to associate claim comes from the MLCC's acts to only grant liquor licenses to John Hamilton's sons if they agreed to a stipulation that neither John Hamilton or their mother could be present or assist in the management of the son's businesses." Pls.' Br. at 5. [Record 268, p 5]. The individual plaintiffs have not sufficiently alleged or proven that the Inkster Defendants had anything to do with the stipulation referenced in the preceding sentence, much less that there was an agreement among the Inkster Defendants, on the one hand, and the MLCC, on the other hand, to deprive the individual plaintiffs of their rights. Hamilton even admitted during his deposition that he has no evidence that anyone associated with Inkster interfered with his family relationship or right of association. See Hamilton Dep. (Dec. 11, 2006) [Record 201-5], pp 497-498. To the extent the individual plaintiffs argue they are the MLCC's co-conspirators, this argument fails because the individual plaintiffs have offered only conclusory allegations and no evidence in support of such an extraordinary claim.

(Record 335, Memo/Order, pp 9-10, n. 3).

In addition to Hamilton's testimony on which the District Court relied for its ruling, the other individual plaintiffs also testified that they have no evidence that the Inkster Defendants tried to interfere with their family relationships or their rights of association and free speech. Record 201, 252, SJ Pleadings; Record 201-9, Jeremy Hamilton Dep, pp 119, 121-123; Record 201-10, John Hamilton, Jr. Dep, pp 107-108, 114, 115. Accordingly, the individual plaintiffs' 42 U.S.C. 1983 claims, insofar as they were based upon an alleged deprivation of the right of association, were properly dismissed.

Plaintiffs in their appellate brief also summarily mentioned as a potential basis for § 1983 liability "retaliation taken against the Appellants for engaging in 1st amendment expression." ROA, Appellant Brief, 12/11/09, pp 34-35. Plaintiffs failed to provide any caselaw in support of this claim, or to specify its factual basis. In the Sixth Circuit, "issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived, and [] it is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to . . . put flesh on its bones." *White Oak Prop. Dev., supra,* 606 F.3d at 850, quoting *United States v Robinson,* 390 F.3d 853, 886 (6th Cir. 2004). The appellate panel in the instant case noted that "Appellants offer[ed] no argument regarding this alleged § 1983 liability" and therefore, "alleged § 1983 liability for retaliation for engaging in First Amendment expression was not appealed." Record 340, 6th Circuit Opinion, p 16. The Court correctly treated this issue as waived. Nevertheless, it went on to correctly conclude that even if preserved, the claim would be without merit:

> Retaliation for exercise of First Amendment rights is a violation of § 1983. *See Hartman v Moore,* 547 U.S. 250, 256 [126 S. Ct. 1695, 1701; 164 L.Ed.2d 441 (2006)]. The arguable "facts" identified by the Appellants for their conspiracy claim . . . are the same and only facts that could be identified as the basis for a § 1983 retaliation claim. As with the conspiracy claim, this plethora of arguable facts suffer from a multitude of problems, including that they misstate the underlying evidence, are presented only to prejudice this Court, are irrelevant, do not describe illegal activity, do not constitute evidence, are actions not taken under the "color" of the law or are legal conclusions unsupported by factual allegations.

Record 340, 6th Circuit Opinion, pp 16-17. The infirmities of the alleged evidence supporting the conspiracy claims – the only evidence that could support the claim of retaliation for exercise of First Amendment rights -- are examined at greater length *infra,* at pp 17-19.

B. The Sixth Circuit Court of Appeals properly affirmed the dismissal of Plaintiffs' federal and state law conspiracy claims against the Inkster Defendants.

The District Court properly stated the standards for proving a conspiracy under federal law as follows:

> A civil conspiracy is an agreement between two or more persons to injure another by unlawful action. Express agreement among all of the conspirators is not necessary to find the

> existence of a civil conspiracy. Each conspirator need not have known all of the details of the illegal plan or all of the participants involved. All that must be shown is that there was a single plan, that the alleged coconspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant.

Record 335, Memo/Order, p 11, citing *Hooks v. Hooks*, 771 F.2d 935, 943-944 (6th Cir. 1985).

The District Court properly recognized that "[t]he standard is similar under Michigan law: 'a conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a purpose not unlawful by criminal or unlawful means.'" Record 335, Memo/Order, p 11, citing *Fenestra Inc. v. Gulf Am. Land Corp*, 377 Mich. 565, 593-594; 141 NW2d 36, 48 (1966). The District Court noted additionally:

> *[A]t the core of an actionable civil conspiracy is a question of damages.* This facet of the law of conspiracy is accurately summed up in the case of *Roche v Blair* [305 Mich. 608, 614; 9 NW2d 861 (1943)]: 'The law is well established that in a civil action for damages resulting from wrongful acts alleged to have been committed in pursuance of a conspiracy, *the gist or gravamen of the action is not the conspiracy but is the wrongful acts causing the damages. The conspiracy standing alone without the commission of acts causing damage would not be actionable.* The cause of action does not

> result from the conspiracy but from the acts done.' In the case of *Auto Workers' Temple Ass'n v Janson* [, 227 Mich. 430, 433; 198 N.W. 992 (1924)], the point is made more succinctly: *the foundation of the action is the damage and not the conspiracy.*

Record 335, Memo/Order, p 11, quoting *Fenestra, supra* at 48-49, and noting 16 Am Jur. 2d Conspiracy, § 53, which is in accord that "[t]he gist of a civil conspiracy is not the unlawful agreement, but the damage resulting from that agreement or its execution."

1. Plaintiffs did not rely on the report of Mr. Levine as support for their conspiracy claim against the Inkster Defendants in the District Court and their arguments based on that report as to Inkster are waived.

In their petition for a writ of certiorari, Plaintiffs cite and rely upon the report of their expert, Michael Levine, as support for their claim that the Inkster Defendants took part in a conspiracy to put them out of business. Petition for Certiorari, pp 9-11. Plaintiffs made no reference to the report as support for their claims against Inkster in their Response to the Inkster Defendants' Motion for Summary Judgment, citing it only as to Van Buren and Romulus, Record 268, Response, p xix.[1] This argument is now waived, as the

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[1] In their brief as Appellants to the Sixth Circuit Court of Appeals, Plaintiffs cited the expert report with respect to the Inkster Defendants for the conclusion that "the fake bomb threat was perpetrated by Inkster officers" for the purpose of obtaining MLCC violations and attempting to close Henry's, and for the

Sixth Circuit Court of Appeals recently explained in a similar case:

> To create a genuine issue of material fact, a party must do more than file an expert report with the district court. It was Big Dipper's job, not the district court's, to present argument as to *how* McLaughlin's report created genuine issues of material fact as to the number of sites available to Big Dipper's business. Big Dipper did not make those arguments in the district court, and it cannot make them now. Big Dipper's arguments as to how McLaughlin's report supports a sites-available number of less than 39 are waived. *See Sigmon Fuel Co. v Tennessee Valley Auth.*, 754 F.2d 162, 164-165 (6th Cir. 1985).

Big Dipper Entm't v City of Warren, ____ F.3d ____ (6th Cir. 2011) (No. 09-2339, rel'd April 13, 2011). In this case too, Plaintiffs appended their expert report to their Response to Defendants' Motion for Summary Judgment. Record 268, 268-2, p 2. However, they did not rely upon the report to establish any factual basis for their claims against the Inkster Defendants, citing it only as to Van Buren and Romulus. Record 268 Response, p xix. In the United States Court of Appeals for the Sixth Circuit, Plaintiffs cited the report for summary factual conclusions, but failed to place those

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equally conclusory statement that "[t]he procedures followed in investigating the bomb threat evidence that it was a hoax." ROA, Appellant Brief, 12/11/09, pp 25, 26. Plaintiffs did not place these factual allegations into any legal framework to explain how they might form the basis for § 1983 liability or for a conspiracy. ROA Appellant Brief 12/11/09.

conclusions in a legal framework or explain how they would show a conspiracy on the part of the Inkster Defendants. ROA, Appellant Brief, 12/11/09, pp 25, 26. It is too late for Plaintiff to cite and rely upon the report of Mr. Levine, which it now claims "identified specific overt acts committed by the Inkster Defendants in furtherance of the conspiracy." Petition for Certiorari, p 9. Plaintiffs are asking this Court to act as a trial court, and to examine evidence that Plaintiffs themselves failed to rely on in the trial court in the first instance. As in *Big Dipper, supra,* Plaintiffs' arguments as to how Mr. Levine's report supports an inference of conspiracy are waived.

2. Plaintiffs' own arguments in the District Court narrowed their conspiracy claims against the Inkster Defendants to the claim allegedly arising out of the false bomb threat.

The Inkster Defendants sought dismissal of Plaintiffs' conspiracy claims against them because there is no evidence to sustain those claims. Record 201, Record 252, SJ Brief, pp 2-8. As the District Court accurately explained, Plaintiffs asserted in response to the Inkster Defendants' summary judgment motion seeking dismissal of the conspiracy claims against said Defendants that, "the overt act in furtherance of the conspiracy was the false bomb threat." Record 335, Memo/Order, p 13, citing Record 268, Response, p 4. Plaintiffs made this assertion in the context of their unsubstantiated allegations that the Inkster Defendants, among themselves and with the MLCC, created a plan to harass or shut down Henry's. Record 268, Response, pp 4-5. *It was Plaintiffs' response that narrowed their conspiracy*

claims involving the Inkster Defendants to the claim allegedly arising out of the false bomb threat.

3. There is no evidence to support Plaintiffs' allegations of conspiracy against the Inkster Defendants.

Plaintiffs have not presented an iota of evidence of any conspiracy by or among the Inkster Defendants. Contrary to the impression that Plaintiffs would like to give this Court, the District Court thoroughly reviewed whether Plaintiffs had presented evidence to support the conspiracy alleged to have arisen out of the bomb scare at Henry's or otherwise.

First, the District Court noted Hamilton's sworn testimony that nobody in Inkster was involved in any conspiracy with respect to Bogart's, and ruled that his testimony "forecloses any conspiracy claim involving the Inkster Defendants to harm Bogart's." Record 335, Memo/Order, p 4, citing Record 201-5, Hamilton 12/11/06 Dep, pp 399, 496.

To the extent that Plaintiffs contend that the alleged acts can establish a conspiracy with the MLCC, the District Court concluded that Plaintiffs did not present any evidence of any conspiracy between the Inkster Defendants and the MLCC. Record, 335, Memo/Order p 10, n 3. As the District Court correctly determined, Plaintiffs "offered only conclusory allegations and no evidence in support of [their] extraordinary" claim that the Inkster Defendants are liable for First Amendment violations because they allegedly were the MLCC's coconspirators. R 335 Memo/Order p 310, n 3.

Plaintiffs offered no evidence of any action by Anthony Abdullah with respect to their businesses, other than investigating the bomb threat at Henry's. They merely speculate that Abdullah called in that threat, but the person who did so has never been identified. Record 201-5, Hamilton 12/11/06 dep, pp 460, 462-463; Record 201-6, Martin dep, pp 18-19. In the absence of specific facts that are "significantly probative," *Anderson, supra,* 477 U.S. at 249, furthermore, the conclusions of Plaintiffs' expert, if considered at this late time, supply no evidence of conspiracy. As the Circuit Court correctly noted, Plaintiffs' speculative and conclusory expert report "cannot be used to create an issue of fact where none existed." See *Williams v. Ford Motor Co.,* 187 F.3d 533, 544 (6th Cir. 1999) (Plaintiffs cannot rely on expert affidavit merely stating conclusory allegations to challenge motion for summary judgment).

Hamilton merely *assumes* that Martin was behind the bomb scare. Record 201-5, Hamilton 12/11/06 dep, p 437. There is no evidence that Martin was involved in any agreement to take the surveillance tape from Henry's. Record 201-6, Martin dep, pp 26-27, 28. The mere fact that Officer Martin acted as an undercover police officer in 1996 in one of Hamilton's businesses in Southgate at the request of the Wayne County Sheriff's Department is clearly not evidence of a wrongful conspiracy. Record 201-6, Martin Dep, pp 8, 13-14; Record 201-5 Hamilton 12/11/06 dep, pp 301-302, 471-473. Hamilton admitted, moreover, that he has no evidence that Martin conspired with the Southgate Defendants. Record 201-5, Hamilton 12/11/06 Dep, pp 432, 433.

Similarly, Martin's reporting of MLCC violations observed on the surveillance tape from Henry's to the MLCC is not evidence of collusion between Martin and the MLCC. The Michigan courts so concluded. Record 201-8, Court of Appeals Opinion, pp 4-5. Furthermore, Martin's alleged vague threat in 1996 to "get" Hamilton, which did not occur, is not evidence of any conspiracy to put Hamilton's strip clubs out of business. There is no evidence of any further contact between Hamilton and Martin until Martin investigated a bomb threat at Henry's four years later, in 2000. Record 201-6, Martin dep, pp 16-17.

4. Plaintiffs failed to show damages that are necessary to sustain a conspiracy claim.

Even if Plaintiffs had proven the conspiracy alleged against the Inkster Defendants, which they did not do, they were required to allege and prove damages in order to sustain a conspiracy claim. *Hooks, supra; Fenestra, supra;* See also 16 Am. Jur. 2d Conspiracy § 53. Plaintiffs' First Amended Complaint did not allege that Plaintiffs suffered any non-monetary damages as a result of the alleged conspiracies by the Inkster Defendants. Record 131, FAC, pp 38-39.

Plaintiffs merely allege in their Petition for Certiorari, Petition for Certiorari, p 20, as they did before the Sixth Circuit Court of Appeals, that Hamilton experienced personal humiliation and mental anguish. ROA, Appellant Brief, 12/11/09, p 51. However, they do not cite to any evidence in the record of any such damages, nor, more specifically, to any such damages attributable to the conspiracy alleged against the Inkster Defendants. Furthermore, Defendants do not contend that Bogart's and Henry's

(In Inkster), John Hamilton, Jr., Jeremy Hamilton or Michael Hamilton suffered any damages as a result of a conspiracy involving the Inkster Defendants.

Plaintiffs attempt to avoid the deficiencies in their arguments by contending that the District Court ignored settled law that a co-conspirator is liable not only for the damages caused by it, but also for damages caused by its co-conspirators. The District Court did not err as Plaintiffs allege because the evidence that the Inkster Defendants presented established, as a matter of law, that Plaintiffs have no evidence of ***any*** conspiracy between and among the Inkster Defendants and/or between and among the Inkster Defendants and the other Defendants. Record 201-4, Hamilton 11/15/06 dep, pp 45, 51-52, 281; Record 201-5, Hamilton 12/11/06 dep, pp 293, 301-302, 305, 317, 329-330, 368, 401-402, 432-433, 435, 437, 460, 462-463, 471-473, 474-475, 480, 497-498; Record 201-6, Martin Dep, pp 8, 13-14, 16, 17, 18-19, 26-27, 28; Record 201-7, Brown dep, pp 8-10, 11, 24; Record 201-8, Michigan Appellate Court opinion/order; Record 201-9, Jeremy Hamilton dep pp 116, 118-119, 121-123, 126; Record 201-10, J. Hamilton, Jr. Dep, pp 111, 113, 114-115, 117.

Plaintiffs' final argument with respect to the lack of damages/conspiracy issue is that the District Court completely ignored Kenneth Landini's report "of the losses suffered by Appellants' bars," which loss allegedly amounted to $13.6 million. However, when Plaintiffs responded to the Inkster Defendants' summary judgment motion, they did not contend that they suffered any damages at the Inkster businesses, that is, Bogart's and Henry's. Record 268, Response. Thus, they abandoned any claim that they had

evidence to support a monetary damages claim arising out of their conspiracy allegations against the Inkster Defendants. See *United States v. Pellullo,* 399 F.3d 197, 222 (3d Cir. 2005) *cert den.* 546 U.S. 1137; 126 S. Ct. 1141; 163 L. Ed.2d 999 (2006).

Furthermore, Plaintiffs do not contend that Mr. Landini's report established any monetary damages at Bogart's or Henry's in Inkster attributable to the conspiracy alleged against the Inkster Defendants. Morevoer, even if Plaintiffs had done so, that report cannot be used to contradict Hamilton's sworn deposition testimony that those entities did not suffer any monetary damages. *See Barwick v Celotex Corp.*, 736 F.2d 946, 960 (4th Cir. 1984) (party cannot raise issue of fact by submitting affidavit contradicting his prior testimony).

To the extent that Plaintiffs contend that the District Court did not consider the Inkster Defendants' alleged involvement in a broader conspiracy with the other Defendants, the Inkster Defendants presented Plaintiffs' sworn admissions that they had no evidence to support the claims alleged, including the conspiracy claims against the Inkster Defendants and any alleged broader conspiracy by the Inkster Defendants with the other Defendants, including Romulus, Van Buren, Southgate and the MLCC. Record 201-4, Hamilton 11/15/06 dep, pp 51-52, 218; Record 201-5, Hamilton 12/11/06 dep, pp 293, 305, 317, 329-330, 401-402, 432-433, 435, 437, 460, 462-463, 472-473; See also Record 201-6, Martin Dep, pp 16-27, 28; Record 201-7, Brown dep, pp 8-11, 24.

The District Court correctly concluded that Plaintiffs did not present any evidence involving a

conspiracy with respect to Bogart's, and either admitted that they did not have evidence, or failed to present evidence, of a conspiracy between the Inkster Defendants, the Van Buren Defendants, the Romulus Defendants, and the MLCC. Record 333, Memo/Order, n 7, pp 16-17, 24, 26; Record 335, Memo/Order, p 4, citing Record 201-5, Hamilton 12/11/06 dep, pp 399, 496; Record 335, Memo/Order, n 3, p 10.

Plaintiffs' conspiracy claims were dismissed, not because the District Court's analysis was too narrow or erroneous, but, instead, because Plaintiffs did not and could not present evidence to support their claims. Plaintiffs did not present evidence establishing the conspiracies alleged and they did not present evidence of damages suffered as a result of the alleged conspiracy involving the Inkster Defendants.

CONCLUSION

For all the foregoing reasons, Respondents City of Inkster, Paul Martin, Kenneth Brown and Anthony Abdullah, respectfully request that the Supreme Court deny review of this matter.

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